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SUBJECT: SUPREME COURT RULES AGAINST KIDNAPPING EXTRADITION  
OF FARC'S "ENRIQUE GAFAS"

SUMMARY

1. (SBU) The Colombian Supreme Court ruled on February 5 against the extradition of FARC member Alexander Farfan, ("Enrique Gafas") for the kidnapping of three Americans. This is the Court's seventh denial of U.S. extradition requests related to hostages or terrorism since August. In a confusing development, the Court approved four terrorism-related extradition cases in the same time frame. In its unfavorable decisions, the Court ruled that Colombia's Constitution limits extraditable offenses to acts that take place outside of Colombian territory -- deviating from its previous standard that extraterritorial effects were sufficient to trigger extradition. Still, Colombia extradited 209 suspects to the United States in 2008, with twenty more extradited in January, 2009. End Summary.

HOSTAGE-TAKING AND TERROR NOW UNEXTRADITABLE?

2. (U) The Colombian Supreme Court ruled on February 5 against the U.S. request to extradite FARC member Alexander Farfan ("Enrique Gafas") on hostage taking, conspiracy to provide material support to a 'foreign terrorist organization' (FTO), and material support to an FTO charges. In the Gafas case, the Court continued to deviate from its prior holdings that extradition is allowed if a criminal act has "extraterritorial effects." Instead, the Court held that Gafas' extradition would be inconsistent with Colombia's Constitution, since his crimes were committed solely in Colombian territory. Gafas was the jailor of three American military contractors, Ingrid Betancourt, and numerous other hostages held by the FARC.

3. (SBU) In the past six months, the Colombian Supreme Court has denied seven U.S. requests to extradite FARC and ELN members on either hostage taking or terrorism charges using the "territorial" test. In addition to the Enrique Gafas case, the Court ruled against the extradition of three FARC co-defendants -- in an indictment involving nine FARC members -- on terrorism charges (the Court did rule in favor of extradition for one of these individuals who was separately indicted for narcotrafficking). The Court also ruled against the extradition of three ELN members who were indicted for hostage taking.

4. (SBU) Still, in a confusing development, the Court

approved the extradition of two other FARC co-defendants in the group of nine, all of whom were indicted on the same terrorism charges. The Court has yet to rule on the remaining four FARC co-defendants in that indictment. In a separate case, the Court approved the extradition of two FARC co-defendants charged with terrorism offenses. In its favorable rulings, the Court continued to apply its traditional "extraterritorial effects" standard.

¶5. (SBU) The differing results in similar cases may reflect the Court's practice of assigning responsibility for drafting Court decision to individual judges -- some of whom have competing views on what is the constitutional standard. We understand the Court is split, with two magistrates favoring the "extraterritorial effects" standard and seven the "territorial" approach.

#### PROSECUTORIAL AND GOC OFFICIALS DISAGREE WITH COURT'S STANCE -----

¶6. (SBU) Prosecutor General (Fiscal General) Mario Iguaran -- who has no role in the Court's decision process -- has argued publicly that while Gafas' crimes took place solely in Colombia, their commission harmed judicial rights of American citizens. Hence, the extraditions of all of the FARC defendants sought on terrorism charges could be considered constitutional. In its opinion on the ELN kidnapping cases, the Inspector General's Office (Procuraduria) argued the same -- that the effects of kidnapping went beyond Colombia's borders and that the U.S. claim to extraterritoriality was

legitimate. GOC officials also disagree with the Court's decision in the Gafas and other FARC case, but have no way to challenge the Court's rulings.

#### EXTRADITIONS AT RECORD LEVELS -----

¶7. (SBU) The Court continues to approve narco-trafficking extraditions without difficulty. The GOC also remains supportive of extraditions. In 2008, Colombia extradited a record number of 209 suspects to the United States. At the end of 2008, the Uribe administration had extradited 790 individuals to the United States -- representing 91 percent of all Colombian extraditions to the United States since 1991. Twenty suspects were extradited in January, 2009 alone.

#### BROWNFIELD